



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cajar Defense Support Company--Request for
Reconsideration

File: B-237522.2

Date: July 3, 1990

Mason Ford, for the protester.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision is denied where the
protester essentially only restates its initial arguments
and expresses disagreement with the decision.

DECISION

Cajar Defense Support Company requests reconsideration of
our decision in Cajar Defense Support Co., B-237522,
Feb. 23, 1990, 90-1 CPD ¶ 213, in which we denied in part
and dismissed in part its protest of the award of a contract
under request for proposals (RFP) No. DAAA21-88-R-0190,
issued by the U.S. Army Armament, Munitions and Chemical
Command for pyrotechnic support services. In its initial
protest, the protester principally argued that, as the low
offeror, it was entitled to award under the terms of the
solicitation.

We deny the request for reconsideration.

On August 17, 1988, the agency issued the RFP for a time and
materials contract for performance of engineering and
technical services supporting all aspects of pyrotechnics,
including flame, smoke and incendiary systems, subsystems,
components and related devices, to be assigned on a task
order basis. The solicitation required submission of a
single hourly rate for each of 13 categories of labor.^{1/}

^{1/} The RFP's schedule contained a single pricing line for
each line item. Specifically, the schedule required one
pricing entry on an hourly basis for each category of labor
solicited.

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Each single hourly rate was required to include direct labor costs, overhead, general and administrative expenses, and profit. The RFP also set forth minimum education and experience requirements for each labor category, with estimated hours provided for each category. The RFP stated that award would be made to the lowest priced technically acceptable offeror.

The protester submitted a timely proposal offering an "average" rate for each of the 13 labor categories, supported by "breakdown rates" that showed three different proposed labor rates for each labor category. The protester explained that it could not submit a competitive offer if it proposed the use of highly skilled senior engineers, and could not offer senior level talent at the "average" rates it proposed. Therefore, the protester explained that although its offer showed "average" rates, it required that all three different rates for each category be included in any contract award, to allow "flexibility in negotiating skill levels and rates for task effort."

The agency requested and received best and final offers (BAFO) on November 30; its evaluation indicated that the protester's offer was the lowest among those received. The protester received the required facility clearance in April 1989 and, in May, the agency contacted the protester to advise Cajal of its intention to award Cajal a contract as the low, technically acceptable offeror, based on the "average" rates contained in the proposal. (The agency apparently considered each "average" rate as the single fixed rate required.)

The protester advised the agency by letter dated May 16 that it objected to this "pricing policy statement" and that its "breakdown rates" contained in its proposal were an integral part of that proposal which Cajal required to be included in the contract. The contracting officer advised the protester by letter of May 23 that she would not award a contract that included three different prices for each category of labor since the agency required offerors to propose a single price for each category of labor for evaluation and award purposes.

The protester's response, in a letter of May 26, indicated that the protester would consider an award on such a basis to be an illegal modification of its proposal, and that the protester would accept such an award only under "duress," reserving the right to request congressional and higher headquarter intervention and indicating an intention to pursue the matter after award. By letter dated June 2, the contracting officer offered the protester a final

opportunity to accept award at its average rates. The contracting officer advised the protester that she would find Cajar's proposal unacceptable unless she received confirmation of the protester's intention to charge its proposed "average" rates as single fixed rates. The protester again responded by letter dated June 7, in which it refused to retract any of its previous statements, but did offer to sign a contract at the average rates "contrary to our proposal and best and final offer."

On July 26, the agency advised offerors that it was reopening discussions; the contracting officer specifically advised the protester by letter of August 2 that it could only submit one price for each category of labor. On August 18, the agency received a second round of BAFOs. In its second BAFO, the protester submitted four alternate proposals, one again offering its "average" rates with three different skill levels of personnel for each category, and another proposing to use only "low-skill level" personnel.^{2/} The latter proposal contained a notation that certain rates offered were "negotiable as part of materials delivered per materials clauses." The protester further advised in its proposal that, of these two proposals, only its original "average" rate proposal was realistic and warned the agency that its ability to offer the skills required by the statement of work would depend on which alternate the agency selected.

The agency determined that the protester's proposals offering the rates for low skill level and the "average" rates were technically unacceptable. The agency therefore awarded a contract to Applied Ordnance Technology, Inc. which had submitted the low, technically acceptable offer. Cajar filed a protest with the agency on October 2 and with our Office on October 20.

In our prior decision, we stated that the solicitation provided for a single fixed rate for each labor category, and that Cajar's "average rate" proposal was properly rejected since it did not conform to the material terms and condition of the solicitation and could not form the basis for award. See Ralph Korte Constr. Co., Inc., B-225734, June 17, 1987, 87-1 CPD ¶ 603. We also stated that Cajar's "low skill level" proposal was also properly found unacceptable as it was conditioned on future negotiation of

^{2/} The other two alternate proposals (for "high skill level" and "middle skill level" personnel) were not low from a price standpoint. We did not consider them further in our decision.

certain rates. We dismissed all remaining issues raised by the protester, to the effect that the agency's request for a second round of BAFOs was illegal because the agency had already awarded a contract to Cajar, since Cajar's protest filed on October 20 was clearly untimely under our Bid Protest Regulations. Those regulations provide that protests shall be filed within 10 days after the basis of protest is known, or where the protest concerns an alleged impropriety incorporated into a solicitation, that the protest be filed not later than the closing date for receipt of proposals following incorporation. 4 C.F.R. §§ 21.2(a)(1) and (2) (1990).

The protester's request for reconsideration raises no issues or arguments not considered in our previous decision except that the protester now objects to our failure to address the fact that it has "[elevated its] protest from individual solicitations to the entire professional services contracting program at Picatinny Arsenal."

The protester never raised this issue to our Office in the course of its initial protest. Further, we have previously advised the protester that we cannot consider such an allegation, since our bid protest function encompasses only objections which relate to particular procurements. Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286.

Next, Cajar again alleges that the agency had already accepted its initial proposal and that having done so, the agency had no authority to request another round of BAFOs.

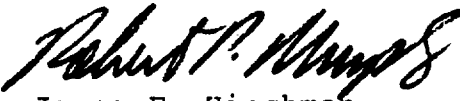
Regarding these assertions, our prior decision specifically stated that by waiting until October, 2 months after the request for BAFOs and 3 months after the contracting officer unequivocally stated her intention not to accept the protester's original offer, Cajar's protest on these issues was untimely. See Cajar Defense Support Co., B-237522, supra. Cajar has presented no evidence to show that we erred in concluding that these protest grounds were untimely filed.

Cajar also disagrees with our finding that the solicitation required offerors to propose a single hourly rate, as well as our finding that its "low skill level" proposal offered certain rates to be negotiated in the future. Cajar asserts that our Office ignored the fact that its proposal offered to negotiate rates in accordance with the solicitation's materials clause, which the protester alleges provided for negotiation of material handling costs in accordance with Federal Acquisition Regulation (FAR) § 52.232-7 (FAC 84-45).

Regarding the single hourly rate, we stated in our decision that the solicitation clearly required a single rate and that, in May, the agency advised the protester orally and in writing that it required such pricing. To the extent that there was ever any doubt, the matter was specifically resolved in the agency's August 2 letter requesting BAFOs, which advised the protester that the agency required submission of offers on that basis. Although Cajar disagrees with this interpretation of the solicitation, it has failed to provide any support for its position.

Concerning the rates to be negotiated in the future, the RFP did provide for payment for materials in accordance with FAR § 52.232-7. However, to the extent it permitted negotiation of material handling costs, the version of that clause contained in the RFP deleted the provision for negotiation and payment of labor costs for material handling. Since the clause providing for negotiation of material handling costs was deleted from the RFP, we therefore again find that Cajar conditioned its "low skill level" proposal on future negotiation of rates after contract award. The agency therefore properly found that the protester was not the low, technically acceptable offeror and was not in line for award.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel